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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

24 2003

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

[REDACTED]

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann
for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as a minister. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience as a minister immediately preceding the filing date of the petition.

On appeal, counsel claims that the director's decision is contrary to precedent.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The regulation at 8 C.F.R. § 204.5(m)(1) echoes the above statutory language, and states, in pertinent part, that "[a]n alien, or any person in behalf of the alien, may file an I-360 visa petition for classification under section 203(b)(4) of the Act as a section 101(a)(27)(C) special immigrant religious worker. Such a petition may be filed by or for an alien, who (either abroad or in the United States) for at least the two years immediately preceding the filing of the petition has been a member of a religious denomination which has a bona fide nonprofit religious organization in the United States." The

regulation indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition."

8 C.F.R. § 204.5(m)(3) states, in pertinent part, that each petition for a religious worker must be accompanied by:

(ii) A letter from an authorized official of the religious organization in the United States which (as applicable to the particular alien) establishes:

(A) That, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work.

The petition was filed on April 26, 2001. Therefore, the petitioner must establish that the beneficiary was continuously working as a minister from April 27, 1999 to the date of filing. The petition indicated that the beneficiary last entered the United States, without inspection, on September 1, 2000.

[REDACTED] elder and trustee of the petitioning church, states that the petitioner "is committed to the creation of a Spanish speaking Church of Christ to fulfill the needs of the Hispanic population in the Saddleback Valley. Therefore . . . [the petitioner] seeks to employ [the beneficiary] in the position of Spanish Minister." Mr. [REDACTED] states that the beneficiary's "starting salary will be \$2450.00 per month." This wording indicates that the petitioner does not yet pay the beneficiary.

The director instructed the petitioner to submit "evidence of the beneficiary's work history beginning April 26, 1999 and ending April 26, 2001," including documentation of payment that the beneficiary received.

In response, Mr. [REDACTED] and [REDACTED] another elder and trustee of the petitioning church, state jointly that the beneficiary "has preached many times on a voluntary basis for [the petitioning church] since October 29, 2000. He has not received payment in any form." Elsewhere, they state "[t]here is no payment. However, we provide [the beneficiary] financial support according to his needs. . . . [The beneficiary] does not work for the church [or] for anyone else. He has no means of self-support." Thus, the petitioner has specified that the beneficiary's support from the church's Benevolence Committee is not considered remuneration for his work on the petitioner's behalf.

Mr. [REDACTED] and Mr. [REDACTED] indicate that the beneficiary performs "voluntary work," and they state that the beneficiary's hourly schedule "varies." They do not claim that the beneficiary has worked full-time. The beneficiary's only specified duties are to "[p]reach and teach on Sundays and teach Wednesday nights." The beneficiary's future duties, as described, appear to begin with establishing the Spanish-speaking church for which the beneficiary is intended to be the pastor.

That church apparently does not exist yet, or at least did not exist when the petitioner described the beneficiary's present and prospective duties.

Regarding the beneficiary's work in Guatemala, Mr. [REDACTED] and Mr. [REDACTED] state that the beneficiary worked full-time in exchange for "free will donations from the congregation" and supplemented his income by repairing shoes part-time. These witnesses do not indicate that they have first-hand knowledge of the beneficiary's work in Guatemala [REDACTED]

[REDACTED] president of the church in Guatemala where the beneficiary used to work, states that the beneficiary "worked as a Minister for the Church that meets at Salcaja, Quetzaltenango, Guatemala from January 1997 until July 2000." He does not discuss the beneficiary's specific schedule, hours worked, remuneration, or supplementary employment.

The director denied the petition, stating that the beneficiary has not worked continuously as a minister during the two years immediately prior to the filing of the petition. The director specifically stated that unpaid volunteer work is not qualifying experience. On appeal, counsel asserts that the director's "decision is contrary to legal precedent." One of the two claimed precedents cited by counsel is an unpublished AAO decision with no force as precedent.

The other case cited by counsel, *Matter of M-*, 1 I&N Dec. 147 (BIA 1941), states that an interruption in one's vocation is not disqualifying provided the interruption was "caused by circumstances beyond his control." An official of the beneficiary's previous church in Guatemala has indicated that the beneficiary worked there until July 2000. The beneficiary did not enter the United States until several months later, on September 1, 2000. Several further weeks elapsed before the beneficiary commenced his work at the petitioning church on October 29, 2000. Counsel addresses this gap by stating that "[f]rom July 2000 until October 2000, [the beneficiary] traveled to the United States and thus was unable to minister." Counsel acknowledges that the beneficiary "was unable to minister" during this period, but the explanation that the beneficiary was traveling throughout this entire period is not persuasive, as the journey from Guatemala to California does not routinely take three months. Furthermore, the petitioner has already claimed that the beneficiary entered the United States on September 1, 2000. The petitioner has not shown that the beneficiary spent that entire time traveling; that the beneficiary was unable to obtain faster transportation; or that the beneficiary was compelled to leave his ministry in Guatemala.

Counsel further claims that the beneficiary's "inability to be legally employed in the United States" constitutes circumstances beyond the beneficiary's control. This argument, however, presupposes that the beneficiary was illegally in the United States for reasons beyond his control. If the beneficiary was free to live and work in Guatemala, then his decision to enter the U.S. without inspection was not beyond his control. The burden is on the petitioner to show that the beneficiary's illegal entry and his subsequent months in the U.S. without lawful status constitute circumstances beyond the beneficiary's control.

Furthermore, Congressional intent is clear. Section 101(a)(27)(C)(iii) of the Act requires evidence that the beneficiary "has been carrying on such vocation . . . *continuously* for at least the

2-year period” immediately preceding the filing of the petition (emphasis added). Section 212(a)(6)(a)(i) of the Act states “[a]n alien present in the United States without being admitted or paroled . . . is inadmissible.” Congress has thus expressly required two years of continuous employment, and has stated that aliens who enter without inspection are inadmissible. Therefore, it would seem to be a gross violation of Congressional intent for us to conclude that the beneficiary’s admitted violation of one section of the Act should mitigate his failure to meet the requirements of another section of the Act. Certainly we cannot find that Congress intended to waive the continuous employment requirement for inadmissible aliens.

We note that *Matter of M-* is readily distinguished from the present proceeding. The alien in *Matter of M-* was a rabbi based in Warsaw, Poland in 1939. The rabbi was on his annual vacation in France when the Nazi army invaded and conquered Poland. The subsequent wholesale persecution of Jews in Poland precluded the rabbi’s return to that country. The advance of the German army forced the rabbi to flee France in 1940, and he ultimately traveled to the United States via Portugal and Morocco. In *Matter of M-*, the Board specifically noted “[a]ppellant was not dismissed, nor did he voluntarily leave his position of rabbi in Poland. He was rather an involuntary exile.” *Id.* at 149. The petitioner has made no effort to show that the beneficiary’s circumstances are even remotely comparable to the extraordinary factors at play in *Matter of M-*.

For the above reasons, the petitioner has failed to demonstrate that the three to four month interruption in the beneficiary’s ministry was caused by circumstances beyond his control. Therefore, the petitioner has not met the test set forth in *Matter of M-*, *supra*. Because counsel’s argument on appeal rests primarily on that precedent decision, counsel has failed to overcome the grounds for denial of the petition.

The legislative history of the religious worker provision of the Immigration Act of 1990 states that a substantial amount of case law had developed on religious organizations and occupations, the implication being that Congress intended that this body of case law be employed in implementing the provision, with the addition of “a number of safeguards . . . to prevent abuse.” See H.R. Rep. No. 101-723, at 75 (1990).

The statute states at section 101(a)(27)(C)(iii) that the religious worker must have been carrying on the religious vocation, professional work, or other work continuously for the two years immediately preceding the filing of the petition. Under former Schedule A (prior to the Immigration Act of 1990), a person seeking entry to perform duties for a religious organization was required to be engaged “principally” in such duties. “Principally” was defined as more than 50 percent of the person’s working time. Under prior law a minister of religion was required to demonstrate that he/she had been “continuously” carrying on the vocation of minister for the two years immediately preceding the time of application. The term “continuously” was interpreted to mean that one did not take up any other occupation or vocation. *Matter of B*, 3 I&N Dec. 162 (CO 1948).

Later decisions on religious workers conclude that, if the worker is to receive no salary for church work, the assumption is that he/she would be required to earn a living by obtaining other

employment. *Matter of Bisulca*, 10 I&N Dec. 712 (Reg. Com. 1963) and *Matter of Sinha*, 10 I&N Dec. 758 (Reg. Com 1963).

The term “continuously” also is discussed in a 1980 decision where the Board of Immigration Appeals determined that a minister of religion was not continuously carrying on the vocation of minister when he was a full-time student who was devoting only nine hours a week to religious duties. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

In line with these past decisions and the intent of Congress, it is clear, therefore, that to be continuously carrying on the religious work means to do so on a full-time basis. That the qualifying work should be paid employment, not volunteering, is inherent in those past decisions which hold that, if the religious worker is not paid, the assumption is that he/she is engaged in other, secular employment. The idea that a religious undertaking would be unsalaried is applicable only to those in a religious vocation who in accordance with their vocation live in a clearly unsalaried environment, the primary examples in the regulations being nuns, monks, and religious brothers and sisters. Clearly, therefore, the qualifying two years of religious work must be full-time and salaried. To hold otherwise would be contrary to the intent of Congress.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.